

# DEFAULT JUDGMENT

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### 12.1 Meaning of ‘default judgment’

In these Rules, ‘default judgment’ means judgment without trial where a defendant –

- (a) has failed to file an acknowledgment of service; or
- (b) has failed to file a defence.

(Part 10 contains provisions about filing an acknowledgment of service and Part 15 contains provisions about filing a defence)

### 12.2 Claims in which default judgment may not be obtained

A claimant may not obtain a default judgment –

- (a) on a claim for delivery of goods subject to an agreement regulated by the Consumer Credit Act 1974<sup>1</sup>;
- (b) where he uses the procedure set out in Part 8 (alternative procedure for claims); or
- (c) in any other case where a practice direction provides that the claimant may not obtain default judgment.

### 12.3 Conditions to be satisfied

- (1) The claimant may obtain judgment in default of an acknowledgment of service only if –
  - (a) the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and
  - (b) the relevant time for doing so has expired.
- (2) Judgment in default of defence may be obtained only –

<sup>1</sup> 1974 c.39.

- (a) where an acknowledgement of service has been filed but a defence has not been filed;
- (b) in a counterclaim made under rule 20.4, where a defence has not been filed, and, in either case, the relevant time limit for doing so has expired.

(Rule 20.4 makes general provision for a defendant's counterclaim against a claimant, and rule 20.4(3) provides that Part 10 (acknowledgement of service) does not apply to a counterclaim made under that rule)

- (3)** The claimant may not obtain a default judgment if –
  - (a) the defendant has applied –
    - (i) to have the claimant's statement of case struck out under rule 3.4; or
    - (ii) for summary judgment under Part 24,
 and, in either case, that application has not been disposed of;
  - (b) the defendant has satisfied the whole claim (including any claim for costs) on which the claimant is seeking judgment; or
  - (c)
    - (i) the claimant is seeking judgment on a claim for money; and
    - (ii) the defendant has filed or served on the claimant an admission under rule 14.4 or 14.7 (admission of liability to pay all of the money claimed) together with a request for time to pay.

(Part 14 sets out the procedure where a defendant admits a money claim and asks for time to pay)

(Rule 6.14 provides that, where the claim form is served by the claimant, he may not obtain default judgment unless he has filed a certificate of service)

(Article 19(1) of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters applies in relation to judgment in default where the claim form is served in accordance with that Regulation)

## **12.4 Procedure for obtaining default judgment**

- (1)** Subject to paragraph (2), a claimant may obtain a default judgment by filing a request in the relevant practice form where the claim is for –
  - (a) a specified amount of money;
  - (b) an amount of money to be decided by the court;
  - (c) delivery of goods where the claim form gives the defendant the alternative of paying their value; or
  - (d) any combination of these remedies.
- (2)** The claimant must make an application in accordance with Part 23 if he wishes to obtain a default judgment –
  - (a) on a claim which consists of or includes a claim for any other remedy; or
  - (b) where rule 12.9 or rule 12.10 so provides, and where the defendant is an individual, the claimant must provide the defendant's date of birth (if known) in Part C of the application notice.
- (3)** Where a claimant –
  - (a) claims any other remedy in his claim form in addition to those specified in paragraph (1); but
  - (b) abandons that claim in his request for judgment, he may still obtain a default judgment by filing a request under paragraph (1).

- (4) In civil proceedings against the Crown, as defined in rule 66.1(2), a request for a default judgment must be considered by a Master or district judge, who must in particular be satisfied that the claim form and particulars of claim have been properly served on the Crown in accordance with section 18 of the Crown Proceedings Act 1947 and rule 6.5(8).

## **12.5 Nature of judgment where default judgment obtained by filing a request**

- (1) Where the claim is for a specified sum of money, the claimant may specify in a request filed under rule 12.4(1) –
- (a) the date by which the whole of the judgment debt is to be paid; or
  - (b) the times and rate at which it is to be paid by instalments.
- (2) Except where paragraph (4) applies, a default judgment on a claim for a specified amount of money obtained on the filing of a request, will be judgment for the amount of the claim (less any payments made) and costs –
- (a) to be paid by the date or at the rate specified in the request for judgment; or
  - (b) if none is specified, immediately.

(Interest may be included in a default judgment obtained by filing a request if the conditions set out in Rule 12.6 are satisfied)

(Rule 45.4 provides for fixed costs on the entry of a default judgment)

- (3) Where the claim is for an unspecified amount of money a default judgment obtained on the filing of a request will be for an amount to be decided by the court and costs.
- (4) Where the claim is for delivery of goods and the claim form gives the defendant the alternative of paying their value, a default judgment obtained on the filing of a request will be judgment requiring the defendant to –
- (a) deliver the goods or (if he does not do so) pay the value of the goods as decided by the court (less any payments made); and
  - (b) pay costs.

(Rule 12.7 sets out the procedure for deciding the amount of a judgment or the value of the goods)

- (5) The claimant's right to enter judgment requiring the defendant to deliver goods is subject to rule 40.14 (judgment in favour of certain part owners relating to the detention of goods).

## **12.6 Interest**

- (1) A default judgment on a claim for a specified amount of money obtained on the filing of a request may include the amount of interest claimed to the date of judgment if –
- (a) the particulars of claim include the details required by rule 16.4;
  - (b) where interest is claimed under section 35A of the Supreme Court Act 1981<sup>1</sup> or section 69 of the County Courts Act 1984<sup>2</sup>, the rate is no higher than the rate of interest payable on judgment debts at the date when the claim form was issued; and
  - (c) the claimant's request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the claim form to the date of the request for judgment.

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<sup>1</sup> 1981 c.54. Section 35A was inserted by the Administration of Justice Act 1982 (c.53), section 15(1), Schedule 1, Part I.

<sup>2</sup> 1984 c.28. Section 69 was amended by the Courts and Legal Services Act 1990 (c.41), Schedule 18, paragraph 46.

- (2) In any case where paragraph (1) does not apply, judgment will be for an amount of interest to be decided by the court.

(Rule 12.7 sets out the procedure for deciding the amount of interest)

### **12.7 Procedure for deciding an amount or value**

- (1) This rule applies where the claimant obtains a default judgment on the filing of a request under rule 12.4(1) and judgment is for –
- (a) an amount of money to be decided by the court;
  - (b) the value of goods to be decided by the court; or
  - (c) an amount of interest to be decided by the court.
- (2) Where the court enters judgment it will –
- (a) give any directions it considers appropriate; and
  - (b) if it considers it appropriate, allocate the case.

### **12.8 Claim against more than one defendant**

- (1) A claimant may obtain a default judgment on request under this Part on a claim for money or a claim for delivery of goods against one of two or more defendants, and proceed with his claim against the other defendants.
- (2) Where a claimant applies for a default judgment against one of two or more defendants –
- (a) if the claim can be dealt with separately from the claim against the other defendants –
    - (i) the court may enter a default judgment against that defendant; and
    - (ii) the claimant may continue the proceedings against the other defendants;
  - (b) if the claim cannot be dealt with separately from the claim against the other defendants –
    - (i) the court will not enter default judgment against that defendant; and
    - (ii) the court must deal with the application at the same time as it disposes of the claim against the other defendants.
- (3) A claimant may not enforce against one of two or more defendants any judgment obtained under this Part for possession of land or for delivery of goods unless –
- (a) he has obtained a judgment for possession or delivery (whether or not obtained under this Part) against all the defendants to the claim; or
  - (b) the court gives permission.

### **12.9 Procedure for obtaining a default judgment for costs only**

- (1) Where a claimant wishes to obtain a default judgment for costs only –
- (a) if the claim is for fixed costs, he may obtain it by filing a request in the relevant practice form;
  - (b) if the claim is for any other type of costs, he must make an application in accordance with Part 23.
- (2) Where an application is made under this rule for costs only, judgment shall be for an amount to be decided by the court.

(Part 45 sets out when a claimant is entitled to fixed costs)

### **12.10 Default judgment obtained by making an application**

The claimant must make an application in accordance with Part 23 where –

- (a) the claim is –
  - (i) a claim against a child or protected party; or
  - (ii) a claim in tort by one spouse or civil partner against the other.
- (b) he wishes to obtain a default judgment where the defendant has failed to file an acknowledgment of service –
  - (i) against a defendant who has been served with the claim out of the jurisdiction under rule 6.19(1) or (1A); (service without leave under the Civil Jurisdiction and Judgments Act 1982<sup>1</sup>);
  - (ii) against a defendant domiciled in Scotland or Northern Ireland or in any other Convention territory or Regulation State;
  - (iii) against a State;
  - (iv) against a diplomatic agent who enjoys immunity from civil jurisdiction by virtue of the Diplomatic Privileges Act 1964<sup>2</sup>; or
  - (v) against persons or organisations who enjoy immunity from civil jurisdiction pursuant to the provisions of the International Organisations Acts 1968 and 1981<sup>3</sup>.

## 12.11 Supplementary provisions where applications for default judgment are made

- (1) Where the claimant makes an application for a default judgment, judgment shall be such judgment as it appears to the court that the claimant is entitled to on his statement of case.
- (2) Any evidence relied on by the claimant in support of his application need not be served on a party who has failed to file an acknowledgment of service.
- (3) An application for a default judgment on a claim against a child or protected party or a claim in tort between spouses or civil partners must be supported by evidence.
- (4) An application for a default judgment may be made without notice if –
  - (a) the claim under the Civil Jurisdiction and Judgments Act 1982 or the Judgments Regulation, was served in accordance with rules 6.19(1) or 6.19(1A) as appropriate;
  - (b) the defendant has failed to file an acknowledgment of service; and
  - (c) notice does not need to be given under any other provision of these Rules.
- (5) Where an application is made against a State for a default judgment where the defendant has failed to file an acknowledgment of service –
  - (a) the application may be made without notice, but the court hearing the application may direct that a copy of the application notice be served on the State;
  - (b) if the court –
    - (i) grants the application; or
    - (ii) directs that a copy of the application notice be served on the State,
 the judgment or application notice (and the evidence in support) may be served out of the jurisdiction without any further order;
  - (c) where paragraph (5)(b) permits a judgment or an application notice to be served out of the jurisdiction, the procedure for serving the judgment or the application notice is the same as for serving a claim form under Section III of Part 6 except where an alternative method of service has been agreed under section 12(6) of the State Immunity Act 1978<sup>4</sup>.

(Rule 23.1 defines ‘application notice’)

<sup>1</sup> 1982 c.27.

<sup>2</sup> 1964 c.81.

<sup>3</sup> 1968 c.48; 1981 c.9.

<sup>4</sup> 1978 c.33.

- (6)** For the purposes of this rule and rule 12.10 –
- (a) ‘domicile’ is to be determined –
    - (i) in relation to a Convention territory, in accordance with sections 41 to 46 of the Civil Jurisdiction and Judgments Act 1982;
    - (ii) in relation to a Regulation State, in accordance with the Judgments Regulation and paragraphs 9 to 12 of Schedule 1 to the Civil Jurisdiction and Judgments Order 2001;
  - (b) ‘Convention territory’ means the territory or territories of any Contracting State, as defined by section 1(3) of the Civil Jurisdiction and Judgments Act 1982, to which the Brussels Conventions or Lugano Convention apply;
  - (c) ‘State’ has the meaning given by section 14 of the State Immunity Act 1978;
  - (d) ‘Diplomatic agent’ has the meaning given by Article 1(e) of Schedule 1 to the Diplomatic Privileges Act 1964.
  - (e) ‘the Judgments Regulation’ means Council Regulation (EC) No. 44/2001 of 22<sup>nd</sup> December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended from time to time and as applied by the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>1</sup>; and
  - (f) ‘Regulation State’ means a Member State.

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1 OJ No. L 299 16.11.2005 at p62.